

VZCZCXRO3700  
OO RUEHNH  
DE RUEHML #4986 3470950  
ZNY CCCCC ZZH  
O 130950Z DEC 06  
FM AMEMBASSY MANILA  
TO RUEHC/SECSTATE WASHDC IMMEDIATE 4259  
INFO RUEHNH/AMCONSUL NAHA IMMEDIATE 0064  
RHHMUNA/CDRUSPACOM HONOLULU HI IMMEDIATE  
RUEKJCS/SECDEF WASHDC IMMEDIATE

C O N F I D E N T I A L MANILA 004986

SIPDIS

SIPDIS

E.O. 12958: DECL: 12/13/2016  
TAGS: [PREL](#) [CASC](#) [MARR](#) [RP](#)  
SUBJECT: JUDGE DENIES CUSTODY MOTION ON LCPL. SMITH

REF: MANILA 4968

Classified By: Ambassador Kristie A. Kenney, reasons 1.4 (b) and (d)

¶1. (U) Makati City Regional Trial Court Judge Benjamin Pozon on December 13 denied a motion by the attorneys of Lance Corporal Daniel Smith, supported by representatives of the Departments of Foreign Affairs and Justice, to return him to U.S. custody in accordance with the Visiting Forces Agreement. His central argument was that Article 10 of the VFA (regarding joint approval of a detention facility following conviction), rather than Article V, para 6 (regarding U.S. right to custody until the end of judicial proceedings) was now operative following his verdict in the case.

¶2. (C) Malacanang convened an action meeting immediately following the decision. The group instructed the Department of Foreign Affairs, working through the Solicitor General, to prepare an "intervention" to submit in support of the motion by defense attorneys to the Court of Appeals calling for the immediate return of LCpl Smith to U.S. custody and an immediate reversal of Judge Pozon's decision. The full text of Judge Pozon's six page ruling only became available in mid-afternoon, so defense attorneys have indicated that they will be unable to file at the Court of Appeals until OOB on December 14, local time. DFA and the Solicitor General are working to complete their document to submit immediately after the defense attorneys file their motion. (According to Philippine law, they cannot move to intervene until after the defense files its motion.) Both the defense lawyers and the government will ask for an immediate ruling by the Court of Appeals. DFA confirmed that its submission would be ready at OOB on December 14.

¶3. (C) Ambassador chaired an in-house inter-agency meeting to come up with recommendations for next steps by the USG, which septel will outline.

Visit Embassy Manila's Classified SIPRNET website:  
<http://www.state.sgov.gov/p/eap/manila/index.cfm>

You can also access this site through the State Department's  
Classified SIPRNET website:  
<http://www.state.sgov.gov/>

KENNEY